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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

YURI GRAHAM BRAND,

Defendant and Appellant.

B171882

(Los Angeles County
Super. Ct. No. PA042930)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Ronald S. Coen, Judge. Affirmed.

Katharine Eileen Greenebaum, under appointment by the Court of Appeal,
for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Assistant Attorney General, Jaime L. Fuster and Chung
L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Yuri Graham Brand challenges his burglary and stalking convictions on the ground Penal Code section 654 requires a stay of the sentence on his second burglary conviction. We conclude the two burglaries were temporally divisible, and may therefore be separately punished.

BACKGROUND AND PROCEDURAL HISTORY

On December 15, 2002, Marissa Hawkins discovered that someone had broken into the apartment she shared with three roommates, who were college students away on semester break. On December 26, 2002, Hawkins returned to the apartment and found it filled with trash. She called the police, who found appellant hiding under one of the beds. Appellant was, or had been, the boyfriend of one of Hawkins's roommates, Tiffany M. On December 11, 2002, Tiffany reported to the police that appellant had sexually assaulted her.

A jury acquitted appellant of three sexual assault counts pertaining to Tiffany, but convicted him of one count of stalking Tiffany and two counts of first degree burglary. The trial court sentenced appellant to five years, four months in prison for the burglaries and stayed the term on the stalking count.

DISCUSSION

The trial court sentenced appellant to four years for the first burglary and sixteen months for the second. It found the burglaries were “predominantly independent of each other” and committed “at different times rather than committed so close in time as to indicate a single period of aberrant behavior.” Appellant contends the sentence on the second count should have been stayed under Penal Code section 654 because both burglaries were committed with “a single objective and intent, the felony stalking of Tiffany.”

Penal Code section 654 prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) If all of the crimes were merely incidental to, or were the means of accomplishing or facilitating one objective, a defendant may be punished only once. (*Ibid.*) However, Penal Code section 654 applies only to “a course of conduct deemed to be indivisible in time.” (*People v. Beamon* (1973) 8 Cal.3d 625, 639.) If a course of conduct is “divisible in time,” section 654 is inapplicable. (*Id.* at p. 639, fn. 11.) Thus, even if offenses were committed with a single intent and objective, they may be punished separately if they were committed on different occasions. (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253.) One factor often considered in determining the temporal divisibility of offenses is whether the defendant had an opportunity to reflect upon and renew his or her intent before committing the next offense. (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935; *People v. Kwok, supra*, 63 Cal.App.4th at p. 1255.)

The evidence supported the court’s implicit finding that the two burglaries were temporally divisible. Tiffany was the last of the four roommates to leave the apartment at the semester break. She testified that the apartment was tidy and all doors and windows were locked when she left the apartment on December 12, 2002. On December 15, Marissa Hawkins and her friend Jason Smith stopped by the apartment. They found the apartment’s front door open and the lights and heat on inside. A window next to the door was broken, and they found drops of blood on the carpet and blood on a light switch. Bedding was strewn about. Hawkins called the police and Tiffany.

Detective Jae Thomas, who was investigating the reported sexual assault on Tiffany, visited the apartment on December 17, 2002 after learning of the burglary. The building manager let her into the apartment. She noticed that the screen on the window next to the front door was bent. The manager told her the window had been broken, but had since been repaired. Tiffany visited the apartment after learning of the burglary. She noticed that her telephone and photo album were missing and her room was in disarray. She tidied up the apartment a bit before returning to her mother’s home.

On December 26, 2002, Hawkins and Smith again visited the apartment. They found the kitchen filled with open food containers and trash. The heat was turned up and a strong foul odor filled the apartment. Smith saw what he thought was a dead body lying under the covers in one of the beds. Hawkins called the police, who found appellant hiding under one of the beds. The police determined that appellant had entered the apartment through a window in the bedroom in which he was found. Tiffany returned to the apartment about a week later. She found that someone had defecated upon piles of her clothing and sheets. All of the food had been removed from the kitchen cabinets and spread upon the counters or eaten.

Appellant testified that he and Tiffany argued on December 11, 2002 and she threatened to have him arrested. He left her apartment and spent the next ten days at a friend's home. During this time, he visited Tiffany's apartment and noticed that the window was broken and the door was open. He entered the apartment through the open door and saw that Tiffany's room was in disarray. He cut himself on some glass when he picked up a shirt that belonged to him. He left after about five minutes and called Tiffany. He left a message for her and called her every day until she returned his call. She told him she knew that her former boyfriend Dorian had broken into the apartment. On December 21, appellant met Tiffany at the apartment, where they stayed together for several days. She then permitted him to remain in the apartment while she returned to her family's home for Christmas. He stayed in the apartment until he was arrested.

Accordingly, substantial evidence shows that the first burglary occurred between December 12 and 15. It was apparently accomplished by breaking the window near the front door. Had appellant remained in the apartment from the time of that break-in through December 26, when he was apprehended, he would have a compelling claim that he committed a single burglary. However, he was not present either when Hawkins and Smith returned to the apartment on December 15 or when Detective Thomas inspected the apartment on December 17. At some undetermined later time, between the detective's visit and Hawkins's return on December 26, appellant broke back into the

apartment through a bedroom window. Thus, appellant left the apartment for at least one interval of approximately two days or multiple intervals of hours after the first burglary, and re-entered at least once by breaking in through a new entry point. The intervals between break-ins afforded appellant an opportunity to reflect upon his conduct and renew his intent. (See, e.g., *In re William S.* (1989) 208 Cal.App.3d 313, 317-319 [each of defendants' multiple entries into same house, through separate entry points and an hour or hours apart, constituted a separate burglary that could be separately punished].) Even assuming appellant's renewed intent paralleled his original intent, he had an opportunity for reflection between entries, and each successive entry into the apartment created a new risk of a potentially violent confrontation with residents who might be present or return while appellant was present. Thus, the second burglary aggravated the risk of harm created by the initial burglary. Accordingly, the offenses were temporally divisible and could be separately punished without violating Penal Code section 654.

Appellant argues that multiple acts are required to violate the stalking statute, Penal Code section 646.9, and the two burglaries served that purpose in this case. However, the issue raised on appeal is whether the two burglary counts could be separately punished. That the two burglaries collectively formed the basis for a stalking charge, upon which punishment was stayed, has no bearing on whether punishment may be imposed for each burglary.

DISPOSITION

The judgment is affirmed.

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BOLAND, J.

We concur:

COOPER, P.J.

FLIER, J.